(1)

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

Charles Cornelius Chenault, III
Petitioner

v.

Tennessee Department of Mental Health; Middle Tennessee Mental Health Institute; Joe Carabene; Walter Wilson; Vicki Pruitt; Lewis Gray; Virginia Calderon; Karen Harrell; Jamie Stanley; James Jackson; Mike Nolan; Walter Williams; Ahmad Davis

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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14 pp

QUESTIONS PRESENTED

1) Did the Sixth Circuit err in ignoring to the fourteenth Amendment guarantee of due process established by Jefferson v. Ysleta 817 F.2d 303 (5th Cir. 1978) ?
2) Do the Supreme Court's ruling in Monell v. New York and Owen v. Independence support this complaint?
3) Has the inadequacy of the *pro se* complaint form fostered a miscarriage of justice?
4) Did the Magistrate Judge err in not considering complainant's motion filed 2-23-00, when entering Report and Recommendation filed 2-24-00?
5) Did the Magistrate Judge err in failing to address qualified immunity or 42 U.S.C. S 1983?
6) Did the District Judge fail to remove even the appearance of impropriety by recusing herself?
7) Should prospective relief be granted as provided for in Edelman v. Jordan 41 U.S 651, reh'g denied, 416 U.S. 1000 (1974)?
8) Were any other opinions, orders, findings of fact, and conclusions of law by the Magistrate, District or Appellate Judges in error?

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In The
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CRETIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

The opinion of the Magistrate Judge appears at Appendix C to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was March 7, 2001.

No petition for rehearing was timely filed in my case. The jurisdiction of this Court is invoked under 28 U.S. C. §1254(1).

STATEMENT OF THE CASE

Jefferson v. Ysleta states "the right to be free of state occasioned damage to a person's bodily integrity is protected by the fourteenth Amendment guarantee of due process." Aggravated rape while in the custody of a state hospital is most definitely "state-occasioned damage to a person's bodily integrity." "Damage to a person's bodily integrity" is "damage to a person's bodily integrity," wether one is being tied to a chair or gang raped. Certainly, being gang raped is worse. To infer that the findings of the Court in Jefferson v. Ysleta have no bearing on this case because the facts of the two cases because the facts of the two cases are different is wrong.

In Monell v. New York and Owen v. Independence the Supreme Court held that Section 1983 can be used to bring suit against local governmental bodies and that immunity cannot bat these suits.

The *pro se* complaint form is inadequate; and fails to address the issue of individual capacity. Complainant asserts that the defendants have been sued as individual in motion filed 2-23-00 on page 2 lines 5 & 6.

" It would be a miscarriage of justice to preclude this *pro se* Plaintiff from seeking redress, for his alleged injuries on a procedural defect. CF. Myers v. United States. (Pleadings should be construed to do substantial justice when drafted by *pro se* Plaintiff)." Berndt v. State of Tennessee; Presidential Politics: U.S. District Judge Aleta A. Trauger is married to Byron Trauger, a past major campaign aide and fundraiser for Albert Gore, Jr & Vice President and Presidential candidate. Nashville is Gore's campaign headquarters for the entire nation. His wife's, (Tipper Gore's) pet issue is mental health. It would be a great embarrassment to the Gore campaign for the events set forth in the Plaintiff's action to be brought to light, much less for Plaintiff to win the case.

Further more, Judge Aleta Trauger used to be married to John Arthur, who was one of the original plaintiff's in the Tennessee State University v. University of Tennessee at Nashville desegregation lawsuit. Then Attorney Aleta Arthur represented her husband in the suit. Defendant James Jackson is a TSU graduate and I was a student. A member of other individuals and TSU itself are involved as outlined throughout plaintiff's motions, For these reasons, Judge Trauger is to close to the situation, has a conflict of interest, and should recuse herself to remove even the appearance of impropriety. "Prospective relief is permitted by the eleventh Amendment..." Edelman v. Jordan. Finally, complainant was readmitted to MTMHI involuntarily on December 3-8-2000 and sexually assaulted again. This establishes the real and present danger that all three previous courts denied.

REASONS FOR GRANTING THE PETITION

1) A conflict exists between the 5th Circuit's ruling in Jefferson v. Ysleta and the 6th Circuit's ruling in this complaint.
2) Monell v. New York and Owen v. Independence held that local governmental lodies are not immune to S 1983 suits.
3) The inadequacy *pro se* of the complaint form provided to the complainant shows a willful disregard for justice by the District Court.
4) By ignoring the motion filed by the complainant on 2-23-00, and the qualified immunity and S 1983 arguments, the Magistrate Judge wrongly excluded some strong points in the appellant's case.
5) Prospective relief should be granted under the eleventh Amendment. Edelman v. Jordan
6) District Judge Aleta Trauger should be recused and another Judge appointed for a trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Charles Cornelius Chenault, III

Date: June 5, 2001

Appendix A No. 00-5859 UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT. CHARLES CORNELIUS CHENAULT, also known as Neil Chenault. Plaintiff-Applicant, v. TENNESSEE DEPARTMENT OF MENTAL HEALTH; MIDDLE TENNESSEE MENTAL HEALTH INSTITUTE; JOE CAROBENE; WALTER WILSON; VICKI PRUITT; LEWIS GRAY; VIRGINIA CALDERON; KAREN HARRELL; JAMIE STANLEY; JAMES JACKSON; MIKE NOLAN; WALTER WILLIAMS; AHMAD DAVIS, Defendants-Appellees.
Filed Mar. 07 2001, Leonard Green, Clerk
NOT RECOMMENDED FOR FULL- TEXT PUBLICATION

Sixth Circuit Rule 29(g) limits citation to specific situations. Please see Rule 29(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced.

Before: MARTIN, Chief Judge; MOORE, Circuit Judge; and TARNOW,* District Judge.

Charles Cornelius Chenault appeals *pro se* from a district court judgement that dismissed his civil rights action filed under 42 U.S.C. § 1983. His appeal had been referred to a panel of this court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, the panel unanimously agrees that oral argument is not needed in this case. *See* Fed. R. App. P. 34(a).

Chenault alleged that the defendants had violated his rights while he was involuntarily confined in a state mental hospital. He primarily alleged that he had been drugged on the night of his admission and that he had been raped by unknown assailants while he was unconscious. Chenault also alleged that the defendants had interfered with his attempts to report the alleged rape to the police and that a defendant had tampered with his outgoing mail. The district court adopted a magistrate judge's recommendation over Chenault's objections, and dismissed the cast on June 8, 2000. *See* Fed. R. Civ.P. 12(b)(6). It is from this judgement that he now appeals.

*The Honorable Arthur J. Tarnow, United States District Judge for the Eastern District of Michigan, sitting by designation.

A *de novo* review of the record shows that the magistrate judge properly found that the Eleventh Amendment barred Chenault's claims for monetary relief against the Tennessee Department of Mental Health and the Middle Tennessee Mental Health Institute. *See MacDonald v. Village of Northport, Mich.*, 164 F.3d 964, 970 (6th Cir. 1999). Chenault has waived his right to appellate review of the claims because he did not raise a specific challenge to this finding in this objections to the magistrate judge's report. *See Miller v. Currie*, 50 F. 3d 373, 380 (6th Cir. 1995).

The complaint did not indicate that the remaining defendants were being sued personally. Thus, it must be assumed that they were sued in their official capacity as state employees, and in that capacity they are not persons who may be liable for damages under § 1983. *See Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989). Chenault apparently argues that the complaint form did not prompt him to make this distinction. However, he subsequently failed to assert that the defendants had been sued as individuals, both in his objections to the magistrate judge's report and in his brief on appeal.

The magistrate judge properly found that Chenault had not requested a legitimate form of equitable relief, because he would not have obtained a particular benefit from the relief requested and because he had not shown that there was a real and immediate danger that he would suffer a similar injury in the future. *See Williams by Williams v. Ellington*, 936 F.2d 881, 889 (6th Cir. 1991). In his objections, Chenault argued that he was under a continuing threat of involuntary commitment in the future. However, it appears that Chenault is no longer committed and the possibility of future harm is speculative at best.

We have considered Chenault's remaining arguments, and they are all equally lacking in merit.

Accordingly, the district court's judgement is affirmed. *See* Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT S/Leonard Green
Clerk

Appendix B, IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION
CHARLES CORNELIUS CHENAULT aka NEIL CHENAULT Plaintiff, v. TENNESSEE DEPARTMENT OF MENTAL HEALTH, et al., Defendants.
NO. 3:99-0986 JUDGE TRAUGER

ORDER Pending before the court are the Magistrate Judge's Report and Recommendation dated March 24, 2000, (Docket No. 30) and the plaintiff's objection thereto (Docket No. 33).

Pursuant to Rule 72(b) of the Federal Rules of Civil Procedure and Local Rule 302, this court is required to review the Magistrate Judge's recommendations *de novo*. Rule 72(b) specifically states: "The district judge may accept, reject, or modify the recommendation decision, receive further evidence, or recommit the matter to the magistrate judge with instructions."

The court has independently reviewed the Magistrate Judge's findings and recommendations, the plaintiff's motion opposing dismissal and to amend his complaint be denied, that the defendant's motion to dismiss be granted and that this action be dismissed. The plaintiff's objections are, for the most part, irrelevant to the recommendations, reiterating arguments raised in the response to the motion. To the extent that the objections address the recommendations, the objections are an incorrect statement of the law and are conclusory.

The plaintiff continues to assert that *Jefferson v. Ysleta Independent School District*, 817 F.2d 303 (5th Cir. 1987), provides a basis for his claims. But *Jefferson* is a cast that deals with the constitutionality of a teacher tying a student to her desk and has no bearing on this cast. *Jefferson* does address qualified immunity, but the Magistrate Judge's recommendation to dismiss this cast is not based upon qualified immunity.

The objections are overruled and the Magistrate's Report and Recommendation is adopted and approved. Accordingly, the defendants' motion is **GRANTED**, the plaintiff's motion is **DENIED** and this cast is **DISMISSED.**

It is ordered this 7th day of June 2000.

S/ALETA A. TRAUGER United States District Judge

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a). FRCP, on 6-8-00 Bygr

Appendix C IN THE UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION CHARLES CORNELIUS CHENAULT a/k/a NEIL CHENAULT v. TENNESSEE DEPARTMENT OF MENTAL HEALTH, et al. No. 3:99-0986 TO: Honorable Aleta A. Trauger, District Judge

REPORT AND RECOMMENDATION By order entered October 29, 1999 (Docket Entry No. 2), the Court referred this civil rights action to the Magistrate Judge for case management, for decision on all pretrial, nondispositive motions and recommendation on all dispositive motions under 28 U.S.C. §§ 636(b) (1) (A) and (B), and to conduct any necessary proceedings under Rule 72(b) of the Federal Rules of Civil Procedure.

Presently pending before the Court is defendants' motion to dismiss (filed December 20, 1999; Docket Entry No. 21), to which the plaintiff has filed a motion opposing dismissal (filed January 31, 2000; Docket Entry No. 25) and motion to amend his complaint (filed January 31, 2000; Docket Entry No. 26). For the reasons set out below, the Court recommends that the plaintiff's motions be denied, the defendants' motion to dismiss be granted, and this action be dismissed.

I. BACKGROUND The plaintiff, who proceeds pro se, filed this action on October 14, 1999, seeking relief under 42 U.S.C. § 1983 for alleged violations of his constitutional rights. The plaintiff's original complaint lists thirteen defendants: the Tennessee Department of Mental Health, Middle Tennessee Mental Health Institute ("MTMHI"), Joe Carobene, Walter Wilson, Vicki Pruitt, Lewis Gray, Virginia

Calderon, Karen Harrell, Jamie Stanley, James Jackson, Mike Nolan, Walter Williams, and Ahmad Davis. The file in the action indicates that process has been executed and returned on all defendants except for Wilson, Harrell, and Davis.[1]

The plaintiff asserts violations of the Eighth, Ninth, and Fourteenth Amendments and also "aggravated rape, conspiracy to commit aggravated rape, medical malpractice, obstruction of justice, negligence, possible federal hate crime." See Complaint at 1. He alleges that, after being admitted to the MTMHI on the evening of October 13, 1998, he was forced to take medication and was then raped while under the influence of the medication. He contends that the rape was planned and the defendants refused to help him after he became aware of what happened, refused to investigate the matter, and taunted him. He further alleges that he was prevented from telephoning the police about the matter and that the defendant Davis tampered with his outgoing mail.

As relief, the plaintiff seeks unspecified compensatory and punitive damages. He also requests injunctive relief directing the State of Tennessee to revamp the Department of Mental Health and to "root out corrupt," a declaration that state statutes which conflict with the Constitution are unconstitutional, the removal of police powers from psychiatrists, the replacement of "kangaroo courts" with the genuine trails, and the restoration of due process and equal protection rights. See Complaint at 3.

On December 20, 1999, the pending motion to dismiss was filed on behalf of all of the defendants except for Wilson, Harrell, and Davis. The defendants contend that the action should be dismissed for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.

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[1]The return of service for the summons mailed to the defendant Davis indicates that is was returned unexecuted with the notation "attempted not known." See Docket Entry No. 15. There is nothing in the file concerning the status of service of process upon defendants Wilson or Harell.

They contend that the claims against the Department of Mental Health and MTMHI are barred by the Eleventh Amendment. They also assert that, to the extent that the defendants have not been sued in their individual capacities, the claims against the defendants are official capacity claims which are also barred by the Eleventh Amendment. They further contend that the plaintiff has not stated viable constitutional claims, that qualified immunity applies, and that the plaintiff has not asserted a basis for equitable relief. See Docket Entry No. 22.

In response, the plaintiff has moved to add defendants and expand his complaint. In his motions, he seeks to add 31 additional defendants to this action. See Docket Entry No. 25. He also seeks to add claims of "manufacturing evidence, falsified medical records, political conspiracy - (Indian Lake Road Extension, Annexation, etc.) falsified date on waiver of indictment." See Proposed Expanded Complaint, Attachment to Docket Entry No. 26. the proposed claims are based upon allegations of wrongdoings which appear to be related to state criminal proceedings involving the plaintiff in 1998. As relief, he requests "full judicial expungment of the state of Tennessee v. Charles Cornelius Chenault, III, with all civil rights restored." Id. at 3.

II.CONCLUSIONS The Court finds that the defendants' motion should be granted. The plaintiff's motion in opposition and motion to amend are essentially meritless and fail to raise any valid opposition to dismissal of this action.

Neither the Tennessee Department of Mental Health no the MTMHI are subject to suit under 42 U.S.C. § 1983. The Eleventh Amendment grants state agencies and entities immunity. See Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989); Pennhurst State School & Hospital v. Halderman, 465 U.S. 89 (1984); Alabama v. Pugh, 438 U.S. 781 (1978); Berndt v. State of Tennessee, 796 F. 2d 879 (6th Cir. 1986). Additionally, the individual defendants have not been names in their individual capacities. Under Wells v. Brown, 891 F. 2d 591, 592 (6th Cir. 1989), a plaintiff bringing an action for damages under 42 U.S.C. § 1983 must clearly

set forth in his pleadings that a state defendant is sued in his or her individual capacity. See Hardin v. Straub, 954 F. 2d 1193, 1199-1200 (6th Cir. 1992); Whittington v. Milby, 928 F. 2d 188, 193 (6th Cir. 1991). When the plaintiff does not indicate the capacity in which a defendant is sued, the defendant is assumed to have been sued in his or her official capacity only and any damage claims are barred by the Eleventh Amendment. Will, supra; Wells, supra.

The Court also notes that the plaintiff has not requested legitimate forms of injunctive or declaratory relief. Further, the plaintiff has not presented a case of controversy for which equitable or declaratory relief is warranted. The plaintiff will not personally benefit form any injunctive relief, and he has not shown that here is a real and immediate threat that he will suffer a future injury due to the alleged wrongdoing. Thus, the plaintiff has no standing to seek prospective injunctive relief. See City of Los Angeles v. Lyons, 461 U.S. 95, 102-09 (1983); Williams v. Ellington, 936 F.2d 881, 889 (6th Cir. 1991); Knox v. McGinnis, 998 F.2d 1405, 1413-14 (7th Cir. 1993); Brown v. Fauver, 819 F.2d 395, 400 (3rd Cir. 1987). The plaintiff's past exposure to alleged illegal conduct "does not in itself show a present case or controversy regarding injunctive relief." O'Shea v. Littleton, 414 U.S. 488, 495 (1974). Similarly, the plaintiff's request for declaratory relief lacks merit because there is no longer any actual or continuing controversy between the parties which would cause an immediate and real threat of injury to the plaintiff. City of Los Angeles, 461 U.S. at 102 (1983); Emory v. Peeler, 756 F.2d 1547, 1552 (11th Cir. 1985); Boston v. Lafayette County, Miss., 744 F. Supp. 746, 755-56 (N.D. Miss. 1990); see also John Doe v. McFaul, 599 F. Supp. 1421, 1432-34 (N.D. Ohio 1984). There is simply no actual controversy between the parties which calls for a declaration of the rights and other legal relations of the parties. See 28 U.S.C. § 2201; Fair Employ. Council v. BMC Marketing Corp., 28 F. 3d 1268, 1273 (D.C. Cir. 1994).

Because the Court finds that the complaint warrants dismissal for the reasons stated,[2] the Court finds it unnecessary to address the defendants' arguments concerning qual-

ified immunity or the plaintiff's failure to state viable claims under 42 U.S.C. § 1983.

The plaintiff's two motions fail to raise any legitimate arguments against dismissal of the action. He fails to address any of the issued raised by the defendants in their motion, and the proposed amendments do not remedy any of the deficiencies in his complaint. The Court also finds no basis upon which to grant the proposed amendment of additional defendants or claims. The proposed addition of defendants appears to be nothing more that a lengthy laundry list of individuals. See Docket Entry No. 26. It is entirely unclear why the majority of these individuals are sought to be added to this action. Further, the facts set out in the "expanded complaint" are unrelated to the facts and claims alleged in the original complaint. the "expanded complaint" also appears to be based upon events surrounding criminal proceeding which were taken against the plaintiff. Claims such as these may not be pursued in an action brought under 42 U.S.C. § 1983 until the criminal proceedings at issue have first been successfully attacked via habeas corpus or other similar proceedings. See Hack v. Humprey, 512 U.S. 477 (1994).

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[2]Although defendants Wilson, Harrell, and Davis were not a party to the motion to dismiss, the reasons for dismissal of the action equally to the claims against them.

RECOMMENDATION For the reasons set out above, the Court respectfully RECOMMENDS that the plaintiff's motions (Docket Entry Nos. 25 and 26) be DENIED, that the defendants' motion (Docket Entry No. 21) to dismiss be GRANTED, and that this action be DISMISSED.

ANY OBJECTIONS to the Report and Recommendation must be filed with the Clerk of Court within ten (10) days of receipt of this notice and must state with particularity the specific portions of this Report and Recommendation to which objection is made. Failure to file written objections within the specified time can be deemed a waiver of the right to appeal the District Court's Order regarding the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d (6th Cir. 1981).

Respectfully submitted, S/JULIET GRIFFIN
United States Magistrate Judge

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a), FACP on 2/24/00 by dab

Appendix D CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) The Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Fourteenth to the Unites States Constitution.
2) 42 U.S.C. S 1983, S 1985, S 1986, and S 1988.
3) Jefferson v. Ysleta , 817 F.2d 303 (5th Cir. 1978);
4) Monell v. New York , 436 U.S. 622 (1978);
5) Owen v. Independence , 445 U.S. 622 (1980);
6) CF. Myers v. United States , 636 F.2d 166,169
7) Berndt v. State of Tennessee , 796 F.2d 879 (6th Cir. 1981);
8) Pennhurst State School and Hospital v. Halderman , 465 U.S. 89 (1984);
9) Section 504 of the Rehabilitation Act of 1973;
10) The Developmentally Disabled Assistance and Bill of Rights Act;
11) 42 U.S.C. Section 6011;
12) 42 U.S.C. Section 6063;
13) Edelman v. Jordan , 415 U.S. 651, reh'g denied, 416 U.S. 1000 (1974);
14) O'Shea v. Littleton , 414 U.S. 488, 495 (1974);
15) Davis , 468 U.S., at 195
16) Anderson v. Creigton , 483 U.S. 635, 638, 639, 646 (1986);
17) Harlow v. Fitzgerald , 457 U.S., at 814, 800, 818, 819 (1981);
18) Federal Hate Crime on the grounds of race;
19) Ephesians 5:11 "Have no fellowship with the unfruitful works of darkness, but rather expose them";
20) Phillippians 2:4 "Let each of you look out not only for his own interests, but also for the interests of others".